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HOUSE BILL 489

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO PAYMENT OF WAGES; PROVIDING EMPLOYEES PROTECTION FROM RETALIATION; EXTENDING THE STATUTE OF LIMITATIONS PERIOD; PROVIDING FOR INJUNCTIVE RELIEF; INCREASING LIABILITY FOR FAILURE TO PAY WAGES; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Minimum Wage Act is enacted to read:

"[NEW MATERIAL] RETALIATION PROHIBITED--PRESUMPTION.--

A. It is a violation of the Minimum Wage Act for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against a person in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act or assisting another person to do so or for informing

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1 another person about employment rights or other rights provided
2 by law.

3 B. Discrimination against a person in the terms or
4 conditions of employment within ninety days of the person's
5 assertion of a claim or right or the person's provision of
6 assistance or information to another person shall raise a
7 presumption that the discrimination was retaliatory in
8 violation of this section. The presumption may be rebutted by
9 clear and convincing evidence that the action was taken for
10 other lawful reasons."

11 Section 2. Section 50-4-26 NMSA 1978 (being Laws 1955,
12 Chapter 200, Section 5, as amended) is amended to read:

13 "50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES.--

14 A. [~~Penalties: (1) Any~~] An employer who violates
15 any of the [~~foregoing~~] provisions [~~shall be deemed~~] of the
16 Minimum Wage Act is guilty of a misdemeanor and [~~shall be~~
17 ~~punished by a fine of not less than twenty-five dollars (\$25)~~
18 ~~or more than three hundred dollars (\$300) or by imprisonment~~
19 ~~for not less than ten nor more than ninety days or by both such~~
20 ~~fine and imprisonment~~] upon conviction shall be sentenced
21 pursuant to the provisions of Section 31-19-1 NMSA 1978.

22 [~~(2) It shall be the duty of the state labor~~
23 ~~commissioner to~~] B. The director of the labor relations
24 division of the workforce solutions department shall enforce
25 and prosecute violations of the Minimum Wage Act. The [~~labor~~

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1 ~~commissioner is hereby empowered to~~ director may institute in
2 the name of the state [~~of New Mexico~~] an action in the district
3 court of the county wherein the employer who has failed to
4 comply with the Minimum Wage Act resides or has [~~his~~] a
5 principal office or place of business, for the purpose of
6 prosecuting violations. [~~It shall be the duty of~~] The district
7 attorney for the district wherein any violation hereof occurs
8 [~~to~~] shall aid and assist the [~~labor commissioner~~] director in
9 the prosecution. [~~thereof.~~]

10 ~~B. Employees' remedies: (1) Any~~ C. In addition
11 to penalties provided pursuant to this section, an employer who
12 violates any provision of Section [59-3-22 New Mexico Statutes
13 Annotated, 1953 Compilation] 50-4-22 NMSA 1978 shall be liable
14 to the employees affected in the amount of their unpaid or
15 underpaid minimum wages [as the case may be, and in an
16 additional equal amount as liquidated damages] plus interest,
17 and in an additional amount equal to twice the unpaid or
18 underpaid wages.

19 [~~(2)~~] D. An action to recover such liability may be
20 maintained in any court of competent jurisdiction by any one or
21 more employees for and [~~in~~] on behalf of [~~himself or~~
22 ~~themselves~~] the employee or employees and for other employees
23 similarly situated, or such employee or employees may designate
24 an agent or representative to maintain such action [~~before and~~
25 ~~in~~] on behalf of all employees similarly situated.

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1 E. The court in any action brought under [~~Paragraph~~
2 ~~(2)~~] Subsection D of this section shall, in addition to any
3 judgment awarded to the plaintiff or plaintiffs, allow costs of
4 the action and reasonable [~~attorneys'~~] attorney fees to be paid
5 by the defendant. In any proceedings brought pursuant to the
6 provisions of this section, the employee shall not be required
7 to pay any filing fee or other court costs necessarily incurred
8 in such proceedings.

9 F. In addition to any remedy or punishment provided
10 pursuant to the Minimum Wage Act, a court may order appropriate
11 injunctive relief, including requiring an employer to post in
12 the place of business a notice describing violations by the
13 employer as found by the court or a copy of a cease and desist
14 order applicable to the employer."

15 Section 3. A new section of Chapter 50, Article 4 NMSA
16 1978 is enacted to read:

17 "[NEW MATERIAL] TIME LIMITATIONS FOR CIVIL ACTIONS.--A
18 civil action to enforce any provision of Chapter 50, Article 4
19 NMSA 1978 shall be commenced within two years after a violation
20 last occurs or within three years in the case of a willful
21 violation and may encompass all violations that occurred as
22 part of a continuing course of conduct regardless of the date
23 on which they occurred."

24 Section 4. REPEAL.--Section 37-1-5 NMSA 1978 (being Laws
25 1947, Chapter 44, Section 1) is repealed.

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